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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. BANKERS INSURANCE CO., Defendant and Appellant.	D073724 (Super. Ct. Nos. CD261535 & 37-2018-00006266-CU-EN-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Laura W. Halgreen and Lorna Alkskne, Judges. Affirmed.

Law Office of John Rorabaugh, John Mark Rorabaugh and Crystal Rorabaugh for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, and Jennifer M. Stone, Deputy County Counsel, for Plaintiff and Respondent.

Bankers Insurance Company (Bankers) posted a $35,000 bail bond on behalf of Jorge Matzunaga, who later failed to appear at his preliminary hearing. The trial court declared bail forfeited, denied Bankers's motion to exonerate bail, and entered judgment.

On appeal, Bankers contends that the judgment is void because several days after initially setting bail, and without good cause, the trial court (1) added "unlawful and unconstitutional conditions" to the bail contract; and (2) the conditions, imposed by the court without notice to Bankers, materially altered the contract. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Bail Initially Set*

Matzunaga was jailed on charges of blowing up an apartment building while using butane to extract hash oil from marijuana. On April 19, 2016, Bankers posted a $35,000 bail bond for his release.[1] The court set Matzunaga's preliminary hearing for May 2.

B. *Additional Conditions*

On April 28, Matzunaga's attorney asked the court to continue the preliminary hearing to June 1. The court granted this request, but only after Matzunaga agreed to a "Fourth Amendment waiver" and also to not use or possess marijuana while released on bail. The court explained, "We're continuing this matter for prelim[inary hearing] date for almost one month. He was involved in very dangerous conduct that involved drugs

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1 Dates are in 2016 unless otherwise indicated.

and then injuries not only to himself, but a loss of homes for eight separate families, and a financial loss of $1.8 million."

C. *Matzunaga Fails to Appear*

Ultimately, one month evolved into a five-month continuance. On October 12, Matzunaga failed to appear for his preliminary hearing. The court declared bail forfeited and on October 18 mailed Bankers notice of forfeiture.

D. *Motion to Exonerate Bail*

Bankers moved to exonerate bail based on Penal Code section 1305, subdivision (g)[2] (hereafter, section 1305(g)). That statute provides a means for exonerating bail if the bail bond agency locates the defendant in another jurisdiction, but the district attorney elects not to seek extradition. Section 1305(g) requires that the defendant be "positively identified" as the wanted defendant in a sworn affidavit by law enforcement in the other jurisdiction. (§ 1305(g).)

Bankers asserted that its agent located Matzunaga in Ensenada, Baja California. Bankers filed an "Affidavit of Identification" purportedly signed by Jose Aguirre, an Ensenada police officer. (Boldface omitted.) Four months later, Bankers filed an amended motion on the same grounds, correcting the officer's name to Herrera. The People opposed the motion with their own affidavit from Officer Herrera, who denied identifying Matzunaga and stated that the signature on the affidavit submitted by Bankers was not his.

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2 Undesignated statutory references are to the Penal Code.

E. *"Supplemental" Papers*

In late October 2017, now represented by different attorneys, Bankers filed a "supplemental memorandum" in support of its motion to exonerate bail. (Capitalization omitted.) There, Bankers asserted that the bail conditions the court imposed on April 28 (i.e., the Fourth Amendment waiver and no marijuana) without notice to Bankers "voided the bail contract." (Capitalization and boldface omitted.) Bankers argued that by imposing conditions "outside of the terms of the bail bond contract, in exchange for allowing the defendant to exercise the constitutional right to remain free on bail prior to judgment," the court materially altered bail and, therefore, terminated the bail bond contract. Bankers further asserted that as a result of these conditions, "the bail contract was void and the subsequent forfeiture invalid."

After the People filed opposition and the court conducted a hearing, the court denied Bankers's motion. The court ruled that Bankers had not satisfied section 1305(g), and that the conditions imposed were reasonably necessary for public safety and did not materially alter Bankers's risk on the bond.

DISCUSSION

I. *BANKERS'S ARGUMENTS THAT THE JUDGMENT IS VOID ARE NOT FORFEITED*

A. *General Rule—The Court May Not Exonerate Bail On Theories Not Asserted During the Appearance Period*

"[E]xcept for capital crimes when the facts are evident or the presumption great," a criminal defendant "may be released on bail by sufficient sureties . . . ." (Cal. Const., art.

I, § 28, subd. (f)(3).)[3] In setting bail, "[p]ublic safety and the safety of the victim shall be the primary considerations." (*Ibid*.)

A bail bond is a promise by a surety to guarantee the defendant's appearance in court. "The purpose of bail and of its forfeiture, however, is to ensure the accused's attendance and obedience to the criminal court, not to raise revenue or to punish the surety." (*People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 42.) In adopting rules of law that disfavor the forfeiture of bail, "the courts' concern is not so much for the bail bond companies, to whom forfeiture is an everyday risk of doing business, but for those who bear the ultimate weight of the forfeiture, family members and friends who have pledged their homes and other financial assets to the bonding companies to secure the defendant's release." (*County of Los Angeles v. American Contractors Indemnity Co.* (2007) 152 Cal.App.4th 661, 666.) "There is a public interest at stake here as well—the return of fleeing defendants to face trial and punishment if found guilty. Given the limited resources of law enforcement agencies, it is bail bond companies, as a practical matter, who are most involved in looking for fugitives from justice. . . . [I]f the bonding company has no assurance that once it has located the

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3 In 2018, the Legislature repealed California's cash bail statutes, effective October 1, 2019, and enacted new statutes providing for a risk assessment system of pretrial release or detention, with an operative date of October 1, 2019. However, a referendum has qualified for the November 2020 general election requiring voter approval before the new statutes may take effect. (4 Witkin, Cal. Crim. Law (2019 Supp.) Pretrial Proceedings § 139A, p. 87.) The parties do not contend that this legislation impacts this appeal and, therefore, we do not consider such legislation.

absconding defendant its bail will be exonerated[,] . . . the company has no financial incentive to undertake the search." (*Ibid*.)

In most cases, a surety has a time period—known as the "appearance period"—in which it may seek to vacate forfeiture, either by returning the defendant to court or by otherwise demonstrating entitlement to vacatur. (§ 1305, subds. (c)-(g).) The appearance period is 185 days from mailing notice of forfeiture to the surety. (§ 1305, subd. (b)(1).)[4] In this case, the appearance period expired on April 21, 2017.

The appearance period is a jurisdictional deadline. "A trial court lacks jurisdiction to entertain a motion to vacate forfeiture if filed after the appearance period has ended." (*People v. The North River Ins. Co.* (2017) 18 Cal.App.5th 863, 871.) A corollary to this rule is that when a surety has filed a timely motion to vacate the forfeiture of a bail bond, "[a] court may also not grant relief based on theories not 'actually asserted' during the appearance period." (*Id*. at p. 873.)

B. *Void Judgments*

Bankers filed its motion to vacate forfeiture on February 10, 2017—within the appearance period. However, the only theory Bankers asserted in that motion was under section 1305(g). Only after the appearance period expired did Bankers file supplemental papers asserting that the conditions rendered the bail contract void.

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4 For good cause, the surety has a statutory right to seek additional time not exceeding 180 days (§ 1305.4). Here, Bankers did not seek additional time.

On appeal, Bankers does not challenge the trial court's ruling denying relief under section 1305(g), but instead urges that the bail conditions rendered its bail contract, and the subsequent summary judgment, void. Invoking the rule just mentioned—that the trial court cannot exonerate bail based on theories not presented during the appearance period—the People contend Bankers's appeal is over before it even starts because Bankers did not raise any of its appellate issues in the trial court until after the appearance period lapsed.

Bankers replies, however, with its own jurisdictional counter argument. Citing *People v. Amwest Surety Ins. Co.* (2004) 125 Cal.App.4th 547 (*Amwest*), Bankers contends that if the judgment forfeiting bail is not merely erroneous (i.e., voidable), but rather *void* for lack of fundamental jurisdiction, the judgment may be challenged "at any time."

Bankers's argument has merit. "Because the law disfavors forfeitures, the bail statutes must be construed strictly to avoid forfeiture, and the procedures set forth therein must be ' "precisely followed or the court loses jurisdiction and its actions are void." ' " (*People v. International Fidelity Ins. Co.* (2012) 212 Cal.App.4th 1556, 1561.) Many statutory procedures involving bail have been held jurisdictional within this rule. (*People v. Landon White Bail Bonds* (1991) 234 Cal.App.3d 66, 74-75 [collecting cases] (*Landon White*).)

For example, in *Amwest, supra,* 125 Cal.App.4th 547, the appearance period expired on June 14, 2000. (*Id.* at p. 549.) When the surety did not produce the accused or otherwise seek to vacate the forfeiture, in September 2000 the court entered summary

judgment against the surety, which did not appeal from the judgment. (*Ibid*.) More than two years later, in December 2002, the surety filed a motion to set aside the judgment, discharge the forfeiture, and exonerate bail on the ground the trial court lacked jurisdiction to enter judgment because the court failed to declare the bond forfeited "in open court," as required by statute. (*Id.* at p. 550.) The County of Los Angeles opposed the motion, arguing that the surety's motion was untimely. (*Ibid*.) On appeal after the trial court denied the surety's motion, the appellate court held that by violating the statute, the trial court lacked fundamental jurisdiction to enter judgment against the surety. Accordingly, the judgment was void and "subject to collateral attack at any time." (*Id*. at p. 550.)

The same jurisdictional rule applied in *Landon White, supra,* 234 Cal.App.3d 66. There, after an accused failed to appear, the court declared forfeiture of the bail bond, duly gave notice to the surety and its bail agent, and subsequently entered summary judgment on the bond. (*Id.* at p. 70.) However, the court rendered judgment against the bail agent (Landon White), not the surety, American Bankers Insurance Company. (*Id*. at pp. 69-70.) No appeal was taken from the judgment. About eight months later, the surety and agent filed a motion to vacate the judgment on the grounds that it was void for lack of fundamental jurisdiction because it was entered against the bail agent and not the surety. (*Id*. at p. 71.) On appeal, the court determined that the original judgment was void for lack of fundamental jurisdiction and, therefore, "it could be attacked at any time and the resulted ruling could be appealed." (*Id.* at p. 74.)

By the same reasoning, to the extent that Bankers contends the judgment here is not merely erroneous (voidable) but void for lack of fundamental jurisdiction, we consider those arguments, even if presented in the trial court after the appearance period expired.

C. *Bankers Has Standing to Raise the Jurisdictional Issues*

The People also assert that Bankers cannot challenge the Fourth Amendment waiver because Bankers "lacks standing" to assert Matzunaga's constitutional rights and Matzunaga agreed to that condition. This argument fails because a bail bond agreement is a contract involving three parties: the surety, the principal, and the government. (*People v. Western Ins. Co.* (2013) 213 Cal.App.4th 316, 322 (*Western Insurance*).) As a party to the contract, Bankers is asserting its own rights, not Matzunaga's.

II. *THE JUDGMENT IS NOT VOID*

A. *The Standard of Review*

"We review the denial of a motion to vacate a bond forfeiture and to exonerate the bond for an abuse of discretion. [Citations.] . . .To the extent the court's ruling rests upon questions of fact, our review is for substantial evidence." (*People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369, 378-379.)

B. *The Court May Impose Reasonable Bail Conditions for Public Safety*

In *In re Webb* (2018) 20 Cal.App.5th 44, review granted April 25, 2018, S247074, the defendant posted bail on felony counts. At arraignment, the court imposed a Fourth Amendment waiver as an additional condition of release. (*Id.* at p. 47.) The defendant petitioned for a writ of habeas corpus, challenging the search condition. The majority

opinion of this court granted the petition, holding that a trial court has no authority to condition bail on a waiver of Fourth Amendment rights. (*Id.* at p. 48.) Relying on *In re Webb*, Bankers contends that the trial court lacked jurisdiction to condition Matzunaga's bail on his Fourth Amendment waiver, rendering the bail contract and judgment void.

Although Bankers's argument may have been viable when it filed its briefs, recently the California Supreme Court reversed *In re Webb*, *supra*, 20 Cal.App.5th 44, holding that a trial court may impose reasonable conditions related to public safety on bail. (*In re Webb* (2019) 7 Cal.5th 270, 271 (*Webb*).) Accordingly, Bankers's contention that the Fourth Amendment waiver necessarily resulted in a void judgment is no longer tenable.

In a related argument, citing *United States v. Scott* (9th Cir. 2006) 450 F.3d 863, 866 (*Scott*), Bankers contends that requiring a defendant to waive Fourth Amendment rights to maintain release on bail violates the " 'unconstitutional conditions' doctrine," rendering the bail contract void. In *Scott*, police arrested the defendant in Nevada on state drug possession charges and released him on his own recognizance (OR). (*Id*. at p. 865.) To qualify for that release, the defendant was required to agree to certain conditions, including having his home searched for drugs at any time without a warrant. (*Ibid*.) The conditions were not the result of any hearing or findings. (*Ibid*.) Rather, a judge "merely 'checked off' " the conditions on a standard form. (*Ibid*.) In conducting a warrantless search of the defendant's home, police found a shotgun, and a federal grand jury indicted the defendant for possessing an unregistered shotgun. (*Ibid*.)

The issue in *Scott, supra*, 450 F.3d 863 was whether the defendant validly waived his Fourth Amendment rights by consenting to pretrial release conditions allowing police to conduct the warrantless search. (*Id.* at p. 865.) The " 'unconstitutional conditions' " doctrine limits government's ability to exact waivers of constitutional rights as a condition of receiving government benefits. (*Id.* at p. 866.) Applying that doctrine, the Ninth Circuit concluded that the defendant could not be required to waive Fourth Amendment rights as a condition of OR release. (*Id.* at 868.)[5]

Bankers's reliance on *Scott, supra*, 450 F.3d 863 is unavailing for three reasons. First, we are not bound by Ninth Circuit decisions, even on federal questions. (*People v. Brooks* (2017) 3 Cal.5th 1, 90; *People v. McCoy* (2005) 133 Cal.App.4th 974, 982.) Rather, we are bound by California Supreme Court decisions, and *Scott* is inconsistent with two such decisions: *In re York* (1995) 9 Cal.4th 1133 (*York*) and *Webb, supra*, 7 Cal.5th 270. *York* holds that a trial court may order OR release conditioned on a Fourth Amendment waiver. (*York*, at pp. 1137-1138.) In *Webb*, without deciding whether a Fourth Amendment waiver was lawful in that particular case, the Supreme Court expanded *York* by holding that a trial court may impose bail conditions on felony

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[5] The dissenting opinion in *Scott* noted that the majority holding may lead to the result that arrestees' "Fourth Amendment rights will be secure while they rest in the county jail" (*Scott, supra*, 450 F.3d at p. 889 (dis. opn. of Bybee, J.)), because trial courts will simply eliminate the conditional release option for those charged with drug offenses. (*Ibid.*) Echoing this concern, a California practice guide states that defense attorneys "faced with a difficult release situation" should consider asking the trial court to impose conditions of release "coupled with a more modest bail sum." (Cal. Criminal Law: Procedure and Practice (Cont.Ed.Bar 2019) § 5.35, p. 113.)

defendants, so long as those conditions are reasonable and have a "sufficient nexus" to protecting public safety.[6] (*Webb*, at p. 278.)

Second, *Scott* is materially distinguishable because in that case, the trial court imposed release conditions without any hearing or exercise of discretion, other than checking certain boxes on a form. (*Scott*, *supra*, 450 F.3d at p. 865.) In sharp contrast here, the court conditioned Matzunaga's bail only after a hearing where the court determined the charged offenses involved "very dangerous conduct."

Third, the doctrine of unconstitutional conditions is not the absolute prohibition that Bankers contends it is. Generally, " '[t]he doctrine of unconstitutional conditions limits the government's power to require one to surrender a constitutional right in exchange for a discretionary benefit.' " (*Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 266.) However, "the Constitution does not forbid 'every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights.' " (*Jenkins v. Anderson* (1980) 447 U.S. 231, 236.) "A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution." (*United States v.*

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6 In its supplemental brief, Bankers points to a footnote in *Scott*, *supra*, 450 F.3d at page 864, footnote 1, which states it is "unclear" whether *York*, *supra*, 9 Cal.4th 1133 "would come out the same way" in light of *United States v. Knights* (2001) 534 U.S. 112 and *Ferguson v. City of Charleston* (2001) 532 U.S. 67. However, Bankers does not explain why those Supreme Court cases might undercut the validity of *York*, especially given the California Supreme Court's 2019 decision in *Webb*, *supra*, 7 Cal.5th 270, which approvingly cites *York*. (*Webb*, at p. 274.) Bankers's failure to develop its assertion with reasoned analysis waives the point and we do not consider it. (*Nelson v. Advondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.)

Mezzanatto (1995) 513 U.S. 196, 201.) For example, the right to jury trial is frequently waived through plea bargaining without a second thought being given to the unconstitutional conditions doctrine. Waiving Fourth Amendment rights to avoid jail can hardly be more coercive than entering a guilty plea and foregoing constitutional rights to a jury trial, the privilege against compulsory self-incrimination, and the right to confront one's accusers.

In its supplemental brief, Bankers also contends that *Gray v. Superior Court* (2005) 125 Cal.App.4th 629 "specifically found that a court did not have authority to condition a bail release on the waiver of constitutional rights." However, *Gray* is a procedural due process case; it does not hold that courts cannot condition bail on a Fourth Amendment waiver. In *Gray*, a physician was charged with felony counts of unlawfully prescribing and possessing a controlled substance and sexually exploiting a patient or former patient. (*Id.* at p. 635.) As a condition of bail, the trial court prohibited the accused from practicing medicine. That condition was requested by the Medical Board of California, which appeared without notice at the accused's arraignment. (*Ibid.*) The Court of Appeal held that procedurally, the bail condition violated the accused's due process rights because "[t]he Attorney General simply appeared at [the accused's] arraignment with a motion in hand, giving [the accused's] attorney no opportunity to research the issue before arguing against it." (*Id.* at p. 638.) Contrary to Bankers's argument here, the *Gray* court also held that a trial court may impose reasonable bail conditions, and the condition imposed in that case was "*not* per se unreasonable." (*Id.* at p. 643, italics added.)

Our conclusion that the Fourth Amendment waiver here did not, as a matter of law, impose an unconstitutional condition on Matzunaga's bail finds further support in the two hypothetical situations that the Ninth Circuit posed in *Scott*, *supra*, 450 F.3d 863. The *Scott* court asserted: "The right to keep someone in jail does not in any way imply the right to release that person subject to unconstitutional conditions—such as chopping off a finger or giving up one's firstborn." (*Id.* at p. 866, fn. 5.) However, both of these hypothetical conditions are not only abhorrent, but they also have no relationship to protecting public safety. As such, if imposed in an actual case each would clearly violate *Webb, supra*, 7 Cal.5th 270 which holds that a bail condition "must be reasonable, and there must be a sufficient nexus between the condition and the protection of public safety." (*Id.* at p. 278, italics omitted.) The examples in *Scott* of clearly unconstitutional conditions only highlight the reasonableness of the bail conditions imposed here.

C. *Material Alteration of Bail Contract*

"[T]he bail bond agreement is a contract involving three parties. First, it is a contract between the surety [here, Bankers] and the principal [here, Matzunaga]. Under the terms of the bail bond agreement, 'the principal is, in the theory of the law, committed to the custody of the sureties as to jailers of his own choosing, not that he is, in point of fact, in this country at least, subjected or can be subjected by them to constant imprisonment; but he is so far placed in their power that they may at any time arrest him upon the recognizance and surrender him to the court, and, to the extent necessary to accomplish this, may restrain him of his liberty.' [Citation.] Second, 'the "bail bond is a contract between the surety and the government whereby the surety acts as a guarantor of

the defendant's appearance in court under the risk of forfeiture of the bond.' " (*Western Insurance, supra,* 213 Cal.App.4th at p. 322.)

There is an implied covenant in a bail bond contract that the government will not materially increase the surety's risk without the surety's consent. (*Western Insurance, supra,* 213 Cal.App.4th at p. 322.) If the government breaches this implied covenant, the surety is discharged from its liability under the bond agreement. (*Ibid*.)

Bankers contends that the Fourth Amendment waiver materially altered the bail agreement because under *In re Webb, supra,* 20 Cal.App.5th 44 and *Scott, supra,* 450 F.3d 863, the court had no jurisdiction to impose that condition. However, as explained *ante*, this argument fails because the California Supreme Court reversed *In re Webb,* and *Scott* is not controlling and in any event is distinguishable.

Moreover, the trial court found that the bail conditions "were made for the purpose of public safety." The court also found that those conditions did not materially alter Bankers's risk of forfeiture. These findings are supported by substantial evidence and are, therefore, binding on appeal. For example, after the court imposed the challenged bail conditions, Matzunaga appeared in court *twice*—on May 23 when the court continued the preliminary hearing to July 27, and again on August 26 at the readiness hearing. Moreover, in *In re Podesto* (1976) 15 Cal.3d 921, the California Supreme Court stated there are many factors that relate to the likelihood that a defendant will jump bail—but a Fourth Amendment waiver is not listed among them. (*Id*. at pp. 934-935 ["(1) the defendant's ties to the community, including his employment, the duration of his residence, his family attachments and his property holdings; (2) the defendant's record of

appearance at past court hearings or of flight to avoid prosecution; and (3) the severity of the sentence defendant faces"].) Indeed, at the hearing on the motion to exonerate bail, even Bankers's lawyer struggled to articulate how requiring Matzunaga to not possess marijuana and waive Fourth Amendment rights while released without supervision materially altered Bankers's risk. The most counsel could muster was, "[I]t's very arguable to say that . . . [Matzunaga] would not want to comply with those new conditions."

Nevertheless, on appeal Bankers contends that the conditions on Matzunaga's bail must have materially altered its risk because in *People v. Surety Ins. Co.* (1983) 139 Cal.App.3d 848 (*Surety Insurance*), the court determined that "the simple renumbering of a criminal complaint" was a material change. However, we read *Surety Insurance* differently. There, the accused was charged in a felony complaint and a bail bond was posted. The original complaint was dismissed and a new one filed, with bail transferred to the new complaint without providing notice to the surety. (*Id*. at p. 849.) Unlike the instant case, *Surety Insurance* involved section 1303, which requires notice to the surety when the bail bond posted on one action is transferred to new charges filed soon after the first action is dismissed. The Court of Appeal held that section 1303 is a mandatory protection for a surety so that it can appraise the new complaint and decide whether to assume the risk in it or surrender the defendant and exonerate the bail. (*Id.* at p. 854.) Thus, *Surety Insurance* stands for the proposition that "when bail is transferred from one criminal action to a new one, notice must be provided to the surety, as required by statute." (*People v. International Fidelity Ins. Co.* (2010) 185 Cal.App.4th 1391, 1400.)

Because the instant case does not involve lack of notice under section 1303 or any other statute, *Surety Insurance* is inapposite.

Bankers also cites *Reese v. United States* (1869) 76 U.S. 13 (*Reese*) and *Western Insurance, supra*, 213 Cal.App.4th 316 to support its contention that the bail conditions materially increased its risk. However, the facts of those cases are entirely different from those here.

In *Reese*, a case involving disputed land grants in California from the Mexican government, the parties agreed that a pending civil case involving one of those grants should be decided before the criminal case proceeded. If the defendant won the civil case, the criminal charges would be dropped. (*Reese*, *supra*, 76 U.S. at pp. 14-15.) The prosecution and defense therefore stipulated to a continuance, and it was fully understood by all parties at the time that if the stipulation should be made, "[defendant] and his witnesses would return to Mexico and remain there until the civil cases in the United States District Court were finally disposed of . . . ." (*Id.* at p. 16.) When after the civil cases concluded the criminal case was set for trial, the defendant failed to appear, and the trial court ordered bail forfeited. (*Ibid.*) The United States Supreme Court determined that the government's consent to the defendant returning to Mexico for an undetermined time, "where it would be impossible for the [sureties] to exercise their right to arrest and surrender him," was a material change releasing the sureties from their bail bond obligation. (*Id.* at p. 22.)

In *Western Insurance*, *supra*, 213 Cal.App.4th 316, while the accused was released on bail, without notice to the surety, the trial court granted his request to attend his

mother's funeral in the Philippines. (*Id.* at pp. 319-320.) After the accused failed to return from the Philippines and bail was forfeited, the surety moved to have the bail bond exonerated. The appellate court determined that by allowing the accused to travel to the Philippines, the court materially increased the surety's risks, requiring bail to be exonerated. (*Id.* at pp. 323-325.)

The object of bail and its forfeiture is to ensure the defendant's attendance and obedience to court orders. (*People v. International Fidelity Ins. Co.* (2017) 11 Cal.App.5th 456, 464.) *Reese* and *Western Insurance* do not support Bankers's argument that the trial court voided the bail bond by imposing Fourth Amendment and drug conditions on Matzunaga's continued release. Allowing a defendant to leave the country without notice to the surety, which occurred in both the cited cases, significantly increases the risk that the accused will not attend future court appearances, while at the same time substantially decreasing or even precluding the surety's ability to mitigate those risks. As noted in *Western Insurance*, the order allowing the defendant to travel to the Philippines "put [the defendant] out of reach of the surety and of domestic law enforcement agencies. It permitted him to disregard the court's directive to return, with little chance of apprehension. And significantly, it denied [the surety] the opportunity to exercise its statutory right to surrender [the defendant] to the custody of the court, rather than incur the very real risk that he would not return and the bond would be forfeited." (*Western Insurance*, *supra*, 213 Cal.App.4th at p. 324.) In contrast here, Bankers does not persuasively show that the conditions imposed on Matzunaga's release materially

increased the risk that he would fail to appear as required. To the contrary, with the bail conditions in place, Matzunaga made two court appearances.

In its reply brief, Bankers further contends that "material alteration, not increased risk[,] is the proper standard to evaluate the modification . . . ." (Capitalization and boldface omitted.) Bankers asserts that where a term unrelated to the accused's appearance in court is added to the bail contract, that term by definition is a material alteration "because the bail agreement specifically limits the terms of the bond to the defendant's attendance in court." Bankers concludes, therefore, that the Fourth Amendment waiver here is a "material alteration" because that condition "had nothing to do with the defendant's ongoing attendance in court, but instead was imposed to control the actions of the defendant, and prevent him from consuming marijuana . . . ."

Bankers's analysis is incorrect. Civil Code section 2819, the statute upon which Bankers primarily relies for this argument, provides in part: "A surety is exonerated, except so far as he or she may be indemnified by the principal, if by any act of the creditor, without the consent of the surety *the original obligation of the principal* is altered in any respect." (Italics added.) In a bail bond agreement, the accused/defendant is the principal. (See *Western, supra,* 213 Cal.App.4th at p. 319.) Moreover, Civil Code section 2819 applies only where there is a "material alteration" of the obligation in a manner not originally contemplated by the surety. (*R.P. Richards, Inc. v. Chartered Construction Corp.* (2000) 83 Cal.App.4th 146, 154.)

In a bail bond contract, the principal's obligation, which the surety guarantees, is to appear in court at the time and place specified in the bond. (See *People v. Amwes*t *Surety*

Ins. Co. (2001) 87 Cal.App.4th 69, 71; *Western Insurance, supra,* 213 Cal.App.4th at p. 322.) Therefore, the relevant "material alteration" that exonerates a bail bond is one that materially changes the likelihood of flight—i.e., that the defendant will not appear in court as required under the bond. (*People v. International Fidelity Ins. Co.* (2017) 11 Cal.App.5th 456, 463.)

D. *Good Cause to Add Bail Conditions*

Bankers acknowledges that a court may change bail conditions for good cause based on changed circumstances. Bankers contends, however, that the court's only reason for imposing the challenged conditions in this case—a one-month continuance of Matzunaga's preliminary hearing—is insufficient and that as a result, the bond was exonerated as a matter of law.

Assuming without deciding that this claimed error, if it occurred, would render the judgment void as opposed to being merely erroneous, the trial court did not abuse its discretion in determining there was good cause to modify bail conditions. The changed circumstance was Matzunaga's request for a one-month continuance. The trial court explained that "[b]ased on what [Matzunaga is] accused of doing in this case, he should not be around any controlled substances or marijuana. This all stemmed out of using marijuana to get certain ingredients out and blowing up an entire apartment." The court noted that with the requested continuance, Matzunaga would be "in the community an additional month, without any supervision and without any direction with regard to the drug problem . . . ." Moreover, the court imposed the Fourth Amendment waiver to ensure that Matzunaga abided by the marijuana condition.

Significantly, the trial court narrowly tailored the bail conditions to impose the least restrictions on Matzunaga, while still protecting public safety during his unsupervised pretrial release. The court offered to modify the marijuana condition at any time upon evidence from a medical doctor who explains "why it's necessary for [Matzunaga] to use marijuana and not something else."

Additionally, the court gave Matzunaga the option to remain on bail *without* these conditions, stating, "If he does not want the Fourth [Amendment] waiver, we can confirm the preliminary hearing date on May 2nd, and we can go forward on that date." The court reiterated, "So we can choose one or the other. I'm happy to allow him to have his prelim and go forward and not change any of the circumstances of his release." Thus, the court did not "unilaterally place" conditions to the bail contract, as Bankers contends; rather, Matzunaga *agreed* to these conditions as the consideration for the continuance *he* desired. (Capitalization and boldface omitted.)

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.